

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



November 20, 1991

ALL-COUNTY LETTER NO. 91-117


TO: ALL COUNTY WELFARE DIRECTORS
ALL GAIN COORDINATORS

SUBJECT: GAIN POLICY QUESTIONS AND ANSWERS

This is a follow-up to regional training provided by the State Department of Social Services on March 11, 16 and 28, 1991 on overpayments and supportive services notices of action, and to the Fresno GAIN Conference held in April.

This letter confirms many of the answers provided in the training sessions and at the conference. It also includes questions received from counties after the sessions and conference.

If you have any questions, please contact your GAIN and Employment Services Operations Bureau analyst at (916) 654-1462 or CALNET (formerly ATSS) 464-1462.


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Attachment

cc: CWDA

A. COST REDUCTIONS - MPP SECTION 42-720.63

1. Q. When a participant transfers from one county to another county which is in cost reductions, is the participant considered an "existing participant" or a "new intake"?
- A. A participant transferring from one county to another would be considered a "new intake" in the receiving county. As such, he/she would be brought into GAIN in accordance with the receiving county's in-take process.

B. PROVIDER CONTRACTS - MPP SECTION 42-730

1. Q. Sections 42-730.1 and 42-740 require counties to enter into contracts or interagency agreements for job, training and education services which are not provided directly by the county welfare department for purposes of determining satisfactory progress. Does this requirement also apply to self-initiated program (SIP) providers?
- A. No. There is no requirement for counties to enter into contracts with SIP providers for purposes of determining satisfactory progress. Section 42-772.47 discusses determining satisfactory progress for individuals in SIPs.

C. SUPPORTIVE SERVICES - MPP SECTION 42-750

1. Q. Should GAIN pay for transportation expenses incurred by a participant to go to and from a medical appointment when the client has been approved for transportation for GAIN participation?
- A. No. GAIN-paid transportation is limited to the transportation necessary to participate in a GAIN approved activity.
2. Q. If a client requests direct payment for exempt child care for days he or she did not attend the activity but the absence is within the allowable absence standard or there is good cause for the absence, does the county still pay the maximum?
- A. No. The county must reimburse the participant's expenses only for those days the participant attends GAIN activities. The county must provide notice, as specified in Section 42-750.8, when paying less than the maximum approved for supportive services. The absence standard (specified in Section 42-782.2) and evaluation

of good cause specified in Section 42-751.121 apply only to collection of overpayments discovered after a payment has been made.

**D. UNDERPAYMENTS AND OVERPAYMENTS OF SUPPORTIVE SERVICES - MPP
SECTION 42-751**

1. Q. Is the \$450 limit per participant for payment of ancillary expenses affected by the overpayment recovery process? For example, if a participant has a supportive services ancillary expense overpayment of \$50, is the amount of ancillary expenses available to the participant reduced to \$400?

A. No. There is no relationship between the two. Further, as specified in Section 42-750.51 the maximum of \$450 for ancillary expenses can be exceeded if determined reasonable and necessary to participate. Section 42-751.3 provides that recovery of an overpayment should be deferred if recovery would preclude participation; another method to attempt collection is offered in Section 42-751.443 which provides that ancillary expense overpayments can be recouped from future transportation expense payments.
2. Q. If a county has a participant sign a statement that he/she will use GAIN supportive services only for GAIN activities, and then he/she does not participate for the time required by the provider, is there an overpayment?

A. There would be an overpayment only if the absence is determined to be without good cause. Obtaining a signed statement from the participant is unnecessary.
3. Q. Is a county required to continue collection of a supportive services overpayment if the individual becomes deferred from GAIN?

A. Yes. As specified in Section 42-751.2, recovery efforts must be made in all cases of current and former AFDC recipients. The only time overpayment recovery ceases is in cases of former AFDC recipients when the county has determined that the cost of recovery equals or exceeds the amount to be recovered.
4. Q. County mileage rates change from month to month. If a participant has a transportation overpayment for Month A which is going to be recovered by automatic payment adjustment, can the recovery amount be based on the amount for Month A or must it be based on the month that is being adjusted?

For example, the authorized transportation amount for Month A was \$50 which was later determined to be an overpayment. To recover this overpayment, the county is going to make automatic payment adjustments at the rate of 10 percent. The authorized transportation amount for the month in which the first adjustment will be made is \$30. Should the automatic adjustment be \$5 or \$3?

- A. As specified in Section 42-751.444, the automatic payment adjustment cannot exceed 10 percent of the current month's payment request. Therefore, in the example given, the payment adjustment would be \$3. If the participant agrees to a flat rate adjustment on the Supportive Services Repayment Agreement (GAIN 57), then the amount adjusted each month can remain the same.
- 5. Q. Are overpayments collected for the entire absence period or for only the hours and days which were in excess of the absence standard?
 - A. As specified in Section 42-751.121(a), only the payment for the hours and days the participant is absent without good cause in excess of the standard is considered an overpayment.
- 6. Q. Are counties required to notify individuals who have a deferred repayment of a supportive services overpayment each time the county reevaluates the deferred repayment criteria and continues the deferral?
 - A. No. As specified in Section 42-751.321 (a)(2) the county is required to reevaluate the deferred repayment status each time a participant changes activities. After reevaluation, if the deferral criteria still apply, the county is only required to document the extension of the deferred repayment according to Section 42-751.32(a)(3).
- 7. Q. How long should a county continue to pay child care while it's reconciling payments and determining good cause for an absence?
 - A. Payments for child care must continue as long as the individual continues to participate and the child care is needed in order to participate.
- 8. Q. Are counties required to collect supportive services overpayments if the amount to collect is less than \$10?

- A. Yes, except as specified in 42-751.52 for former AFDC recipients where the cost of recovery would equal or exceed the amount of the overpayment.

E. SELF-INITIATED PROGRAMS - MPP SECTIONS 42-772.4

- 1. Q. Aren't the deferrals under Sections 42-761.4(a) and 42-761.4(p) really the same? How do we know when to use one as opposed to the other?

- A. The difference between these two deferrals has to do with their purpose and the order in which they are considered during the appraisal process. The purpose of the deferral under Section 42-761.4(a) is to allow an individual who is pursuing a degree or certificate to complete the course of study, even though the program may not be approvable as a SIP. This is the first deferral that is considered after the education or training program is disapproved as a SIP.

If the program cannot be approved for deferral under Section 42-761.4(a) for a reason such as the program does not lead to a degree or certificate, the deferral under Section 42-761.4(p) is used. The purpose of this deferral is to allow the individual to complete the current term to avoid financial losses such as personal investments for tuition and books. This deferral can also be used when a person who is self-enrolled in basic education is determined not to need the program as a result of the testing required under Section 42-761.361(a).

- 2. Q. Tracking satisfactory progress for SIPs is difficult and often the information is not available until long after the participant has dropped out or failed the program. How do we address the problems associated with tracking satisfactory progress for SIPs?

- A. Section 42-772.47 requires the participant to submit progress reports at least quarterly. Section 42-772.473 further allows the county to consider that a participant who refuses to furnish the required documentation is not making satisfactory progress. The activity agreement for SIPs specifies when the progress reports are due.

If they are not received on a timely basis, the county should notify the participant again of the requirement and inform him/her that failure to submit the documentation could result in a determination that

he/she is not making satisfactory progress. Cause determinations and scheduling for the next GAIN activity should be pursued as necessary.

3. Q. If the progress report for a SIP participant indicates he/she is failing some classes and may not finish within two years, do we say he/she is not making satisfactory progress?
 - A. Whether a SIP participant is making satisfactory progress is determined by the provider. If the participant had good cause for failing to participate or meeting progress or attendance standards, and the provider allows the participant to continue in the program, he/she is considered to be making satisfactory progress.
4. Q. In order to adjust the completion date for a SIP, what does it mean to say the break in participation must be for a good cause that prevented participation? Doesn't good cause for non-participation, by definition, prevent participation?
 - A. In order to be considered "preventing participation", the break in participation must cause the individual to cease participation long enough to lose course credits or to repeat interrupted courses. The regulations handbook material following Section 42-772.412(c) illustrates different reasons for breaks in participation. The appropriate application of these sections will need to be determined on a case-by-case basis.
5. Q. Some persons with a learning disability may take longer to complete a program that was designed as a two-year course. Can they have additional extensions, or can arrangements be made for them to attend part-time for more than two years?
 - A. No. A SIP cannot be approved if it is not expected to be completed within two years. If the program meets all other SIP criteria, it would be appropriate to defer the individual under Section 42-761.4(a) until the remainder of the program can be completed within two years.
6. Q. Section 42-772.422 provides that if the county and the participant cannot agree that the participant's goal occupation is in demand, the participant may provide sufficient documentation to demonstrate that the "local labor market" provides reasonable opportunities for

employment. Since the county's determination is based on its most recent labor market needs assessment, what would be the definition of "local labor market" in this context, and could it be different from that identified by the county?

- A. For purposes of demonstrating to the county that the participant's occupational goal is likely to lead to employment, "local labor market" is the same as that which is identified in the county GAIN Plan. Depending on local economic conditions, this labor market may extend beyond the county's boundaries.

- 7. Q. A participant is in an approved SIP at a local community college. She quits and enrolls in another school in the same type of program. Is the SIP terminated, or is this a continuation? If it cannot be continued as a SIP, can she be deferred until the program is completed?

- A. A vocational training or education program is defined in Section 42-722.42 as one that will provide the participant with the training or education required to obtain employment in his or her goal occupation. The regulations do not prohibit changing schools. The program can continue to be approved as long as it provides the training or education required for the specific occupation identified in the original SIP contract, and it can still be completed within two years of the date that contract was signed.

- 8. Q. At Appraisal, a GAIN 26 is completed showing a preliminary employment goal. The participant is deferred, or for some reason cannot enter GAIN immediately. During the deferral period, the participant enters a training or education program that otherwise meets SIP approval except that it does not match the preliminary employment goal. Is this an approvable SIP?

- A. Section 42-761.382 provides that the preliminary employment goal shall reflect the participant's preferences to the maximum extent possible. Therefore, the county should review with the participant the reasons why his/her employment goal has changed and whether the new goal meets the guidelines for development of the preliminary employment goal in Section 42-761.381. If the county finds that the original preliminary employment goal was unrealistic, or that the participant is more likely to succeed in achieving the new goal, the SIP can be approved.

9. Q. At the GAIN Conference workshop on SIPS it was said that one of the approval criteria for a SIP is that it must be a degree or certificate program. Where is this requirement found in regulations?
- A. That information was in error. The regulations do not require that the program be a degree or certificate program in order to be approvable as a SIP. The program must, however, provide the training or education required to obtain employment in the participant's goal occupation.
10. Q. At Appraisal an individual is deferred under Section 42-761.4(a) because he will be unable to complete his degree or certificate program within two years. When he gets within two years of completion, does he lose his deferral status and must he then participate in GAIN as a SIP participant?
- A. No. The individual may choose to continue to be deferred as long as the criteria in Section 42-761.4(a) are met. If he chooses not to exercise his deferral at this point, and the program meets all the SIP criteria, he may be brought into GAIN as a SIP participant.
11. Q. If an individual has employment skills, but not for a job in demand, can he or she be approved for a SIP in a different occupation in demand?
- A. Yes. Section 42-772.43 requires that the individual must need the self-initiated training or education program in order to become employable in unsubsidized employment. If a person has education or skills in a particular occupation, but there are no jobs available in that occupation, he/she cannot be considered employable. However, if the individual has a BA degree, regardless of the occupational area, he/she is considered employable (Section 42-772.431).
12. Q. How can a county determine whether a SIP will or will not lead to an occupation in demand in the labor market?
- A. Section 42-772.421 defines an occupation in demand as one that has been identified as in demand in the county's labor market needs assessment, which is part of the GAIN County Plan. If the county and the participant do not agree that the occupation is in demand, Section 42-772.422 provides a means for the participant to provide documentation showing that there are opportunities in the local labor market for that particular occupation.

F. CAUSE DETERMINATION AND CONCILIATION - MPP 42-781

1. Q. If a county determines an individual did not have good cause for failing/refusing to participate, but the county does not meet the 20-day timeframe for making the determination specified in Section 42-781.22, does the determination of no good cause stand?

A. As specified in Section 42-781.25, the 20-day timeframe for determining cause can be extended if there are extenuating circumstances on the part of either the county or the individual. If the cause determination was not completed within the 20-day timeframe due to extenuating circumstances, it is a valid determination.
2. Q. What action should be taken in a situation when an individual is ready to sign a conciliation plan, but is unable to do so within the 30-day conciliation period due to circumstances beyond his/her control, e.g. his/her GAIN worker is unavailable? (Sections 42-781.6 and .7).

A. Section 42-781.62 allows for a 10-day extension of the conciliation period if the individual has made a reasonable effort to conciliate, significant progress has been made in resolving the dispute and the county believes an extension will lead to agreement. This extension must be agreed to in writing. The situation described in the question would meet these conditions.
3. Q. Can an individual waive the required six-day interval between the notification of a no good cause determination and the conciliation appointment? (Section 42-781.21)

A. Yes. Section 42-781.413 provides that the conciliation appointment can take place immediately following the cause determination interview if both the individual and the county agree and the written conciliation appointment notice, required in Section 42-781.41, is given to the individual prior to the appointment.
4. Q. What action should the county take when an individual has good cause for missing the various conciliation appointments, including those that have been rescheduled?

A. Good cause determinations are not applicable to missed conciliation appointments. Section 42-781.24 specifies

that if the individual does not keep a cause determination appointment, a determination is made based on available information.

When an individual does not keep an appointment for a conciliation interview, Section 42-781.44 specifies that the county must attempt to contact the individual by phone, or in writing if there is no phone or if the county is unable to reach the individual by phone. The individual has until the end of the 30-day conciliation period to contact the county. Likewise, the county can continue to try to contact the individual during the 30-day conciliation period. If no contact is made by the end of the 30-day conciliation period, conciliation is not successful and the individual is sanctioned.

When an individual misses an appointment to determine whether he/she had good cause for failing/refusing to meet the terms of a conciliation plan

(Section 42-781.8), the county must make a determination based on available information (Section 42-781.82).

5. Q. Can a conciliation plan require an individual to complete more than one activity/component to successfully conciliate? For example, can an individual who has failed/refused to attend Appraisal be required to attend Appraisal, enter into a contract, and then participate in the activity agreed to in the contract? (Section 42-781.7)
- A. No. A conciliation plan cannot require an individual to participate in sequential activities/components (Section 42-781.71). In the example given, the conciliation plan can only require the individual to complete Appraisal.

G. SUPPORTIVE SERVICES NOAS

1. Q. Are end dates required on the supportive services Notices of Action (NOAs)?
- A. Yes. This date is in most instances based on an estimate of the completion date for the GAIN activity. However, because supportive services needs can fluctuate for example from semester to semester a county may opt to issue the NOAs showing semester end dates.
2. Q. For open-entry, open-exit activities, what end date do you put on the NOA?

- A. The county can use CASAS estimates of completion; estimates based on further appraisal by the education provider; or estimates based on the county's prior experience and/or county policy.
3. Q. Can the first line on the NOA show an hourly, daily or weekly amount instead of a monthly amount?
- A. The county may provide the participant an hourly, daily or weekly amount in the authorization section, but must provide a monthly total in the computation section.
4. Q. If a client is discontinued from AFDC, is a timely NOA required to discontinue supportive services?
- A. Yes. A client must be sent the M42-750M "Combined Child Care and Transportation Discontinuance" NOA.
5. Q. After AFDC is discontinued, do we continue to pay GAIN supportive services payments for the 10-day notice period? Or does the AFDC discontinuance NOA take the place of GAIN supportive services NOA?
- A. Yes. Supportive services payments continue until effective date of termination. At this time, an M42-750M NOA must be issued before supportive services can be terminated.
6. Q. Can the county use the required NOA language but in a different order?
- A. Any request to modify the NOA language must be submitted to your GAIN Operations consultant for review and approval.
7. Q. Since the development of the GAIN 50, which informs the participant of his/her hearing rights, it would be very helpful if the NA 6 (NOA back for AFDC) did not have to be sent also.
- A. Only the GAIN 50 accompanies the supportive services NOAs; the NA 6 back is not sent with the GAIN supportive services NOAs.
8. Q. Can a county send separate NOAs for each child when there are changes in child care for more than one child?
- A. Yes. The county may issue separate notices for each child in a family. However, we prefer that the county issue one single notice showing all applicable changes made to arrive at the maximum payment level.

9. Q. Can a county send separate M42-750L NOAs (Payment Within Maximum) when the county issues separate warrants for child care and transportation?
A. Yes.
10. Q. If the county automates their GAIN supportive services notices, can the county exclude check box items that do not apply to a client?
A. Yes. Prior state approval is not required to makes these types of changes.
11. Q. Are there any restrictions of which county staff can complete NOAs?
A. No. The county is free to determine who at the county welfare department level is authorized to complete the NOAs.
12. Q. Why is a NOA necessary when the county pays the provider directly?
A. The NOA is used to notify the client of what supportive services have been approved, the maximum payment level and the method of payment.
13. Q. Does the county have to keep a copy of the GAIN 50 on file or can it just document that a copy was sent/given to the client?
A. The county can document in the case file that a GAIN 50 was sent/given to the client. It is not necessary to keep a copy of the GAIN 50 on file.
14. Q. What if, prior to ACL 90-102, we never gave a participant an approval NOA. What action should we take?
A. The county must give the client the applicable NOA with the next determination of supportive services.
15. Q. Must the CWD issue a NOA each month the participant does not use child care for the exact number of hours authorized for each month?
A. No. When a client claims the maximum authorized or less and the county pays what was claimed, a NOA is not required.

16. Q. Can a client waive the right to a timely NOA?
- A. Section 22-022.2(b) provides that timely notice is not required when the county receives a clear written statement signed by the individual that: 1) provides information which requires discontinuance or reduction of supportive services and indicates that the individual understands the consequences of providing this information; or 2) indicates that the individual no longer wants supportive services.
- The county is still required to send an adequate notice no later than the effective date of the action. The county cannot require a client to provide or sign such a statement.
17. Q. When is the M42-750L NOA, Payment Within Maximum, used?
- A. The M42-750L is used when the payment issued by the county is less than the amount claimed by the client, but the payment is within the authorized maximum noted in the approval NOA.
18. Q. Must a new notice be issued at component changes when the payment maximum will not change?
- A. Yes. Clients must be informed what GAIN activity they are receiving payments for and the new authorization period. The NOA also verifies that all other arrangements remain the same.
19. Q. Can the county approve a week of child care in December when there is no activity, but the county needs to reserve the slot? If so, is a NOA needed?
- A. Yes. The county can approve the child care if child care arrangements would otherwise be lost and an approved GAIN activity is scheduled to begin within 30 days (Section 42-750.37). The county would issue an M42-7500 NOA.
20. Q. When child care arrangements are changing for only some of the children in the assistance unit, does the NOA reflect only those changes?
- A. Yes.
21. Q. What do we do when classes must go longer than originally projected (for example, ending in July instead of May)?

- A. The county must send an M42-7500 (Extension of Child Care and/or Transportation) NOA if the elements of the authorization NOA change.
- 22. Q. What notice must be sent if the participant's schedule doesn't change, but his/her child's does?
 - A. The county must issue an M42-750C (Child Care Payment Change) NOA.
- 23. Q. Can contractors issue supportive services NOAs?
 - A. Yes. Although the CWDs retain responsibility for authorizing payments, contractors may issue supportive services NOAs. All contractor-prepared NOAs must use the state-prescribed NOA language and format contained in ACL 90-102 and be issued according to Section 42-750.8 and Manual of Policies and Procedures Division 22. Additionally, contractors may issue reminder notices in accordance with prescribed instructions in ACL 90-102 (pages 8 and 9).

This answer supercedes instructions given in ACL 90-102, which charged the CWD with sole responsibility for issuing the supportive services NOA and reminder notices.
- 24. Q. Are counties required to send NOAs each month for adjustments made to recover supportive services overpayments or unused portions of advances? If yes, is this a requirement even when the adjustment is the same for each period of time?
 - A. Yes. As specified in Sections 42-750.8 and 22-022, a NOA is required for each supportive services adjustment. An appropriate NOA must be sent for each reason requiring a change or adjustment to a supportive services payment.